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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,957	01/20/2004	Michel Doucet	11348-0009-999	3881
20583	7590	03/02/2005	EXAMINER	
JONES DAY			PRICE, CARL D	
222 EAST 41ST ST			ART UNIT	
NEW YORK, NY 10017			PAPER NUMBER	

3749

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/761,957	<b>Applicant(s)</b> DOUCET ET AL.	
	<b>Examiner</b> CARL D. PRICE	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 49-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/20/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### Response to Arguments

Original claims 1-48 have been cancelled.

Applicant's arguments with respect to newly submitted claims 49-60 have been considered but are moot in view of the new ground(s) of rejection.

While applicant's remarks suggest (see page 4, line 16) new "Independent claim 49 substantially corresponds with canceled independent claim 1", it is noted that the scope of claim 49 differs from the scope of the invention previously examined. For example, claim 49, requires "the annular wall being clamped between the ring and the tubular element".

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner disagrees with applicant's position that it would not have been obvious to a person having ordinary skill in the art to combine the JP 02-290270 teaching of an amorphous polymer container material with Hattori. The absence of an indication that the amorphous polymer container material of JP 02-290270 that the container is "adapted for containing a fuel to be used in a lighter" does not preclude JP 02-290270 from being relied on to support a rejection of the claims under 35 USC

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103. Furthermore, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). And, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, JP 02-290270 (see the English language abstract) clearly teaches that amorphous polymer resins provide advantageous "chemical resistance, pressure resistance and gas barrier properties" to aerosol containers, for example. Thus, a person having ordinary skill in the art attempting to provide a suitable material for the pressurized container of Hattori would look to analogous pressurized containers, such as JP 02-290270, when attempting to solve the problem of, for example, chemical resistance, pressure resistance and gas barrier properties.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

**Claims 54-60: Rejected under 35 U.S.C. 103(a)**

Claims 49-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP0671589 (HATTORI) in view of JP 02-290270.

EP0671589 (HATTORI) shows and discloses (see figure 8) a gas cigarette lighter comprising:

- a fuel reservoir (1) made of a polymer material;
- the reservoir having a top wall (not referenced), the top wall having an annular groove and an annular wall (not referenced);
- a well (not referenced), the well passing through the top wall;
- a gas dispensing device (5) including a tubular element, the tubular element being disposed in the well;
- a ring (8), the ring engaging the annular groove;
- wherein the annular groove surrounds the well, and at least a portion of the annular wall is reinforced by the ring (8);
- wherein the top wall (not referenced) forms the annular wall between the annular groove and the well, and the annular wall is clamped between the ring and the tubular element;
- wherein the annular groove has a first annular face facing radially outwards, and the ring has a first annular face facing inwards, and the first annular face and the first ring face are engaged in tight fitting manner with one another;

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- wherein the annular wall has a second annular face facing radially inwards, and the ring has a second annular face facing radially outwards, and the second annular groove face and the second ring face are not in engaged in tight-fitting manner with one another;
- wherein the well, the tubular element the ring and the groove are in the shape of a cylinder that is circularly symmetrical, the groove having a certain inside diameter, and the ring having an inside diameter that is no larger than the inside diameter of the groove, the well having a certain diameter and the tubular element having a certain outside diameter that is no smaller than the diameter of the well;
- wherein the groove has a certain outside diameter, and the ring has an outside diameter that is no larger than the outside diameter of the groove;
- wherein the lighter is provided with a head (not referenced) integrally formed with and overlying the reservoir,
  - o the head having an ignition device (11); and
  - o a device (9) for controlling the gas dispensing device;
- the tubular element (5) is engaged by force in a hole provided in the head;
- wherein the gas dispensing device includes a regulating device (2) and a valve (4) that are received inside the tubular element;
- wherein the tubular element is made of metal and has an internal shoulder (3) against which a micro-porous disk (not referenced) is held by a retaining ring (2), the tubular element having one end crimped against the retaining ring;
- wherein the reservoir has a side wall against which the top wall is bonded (i. e - integrally formed).

EP0671589 (HATTORI) shows and discloses the invention substantially as set forth in the claims with possible exception of the lighter tank:

- being made from rigid amorphous polymer material selected from at least one of the group consisting of ABSs and SANs;

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- the ring being part of the head of the lighter; and
- the head and the ring are formed as a single piece made of a semi-crystalline polymer material.

JP 02-290270 teaches, from the same fuel tank field of endeavor as EP0671589 (HATTORI), forming an aerosol container having gas barrier properties from a rigid amorphous acrylonitrile polymer material.

In regard to claims 49-53, for the purpose of forming an aerosol container having gas barrier properties, for example, it would have been obvious to a person having ordinary skill in the art to modify the container of EP0671589 (HATTORI) to be made from a rigid amorphous acrylonitrile polymer material, in view of the teaching of JP 02-290270. Also, in regard to claims 54-60, since the desired properties of the tank material, and the manner of attaching the ring to the head, would depend on numerous design concerns such as the type of fuel used, the size of the container, the relative sizes of each of the lighter components, etc. to form the container/tank of EP0671589 (HATTORI) from ABS or SAN, semi-crystalline material, and to integrally form the head, top and/or ring can be viewed as nothing more than a mere matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

### **Conclusion**

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

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**THIS ACTION IS MADE FINAL**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a long horizontal line extending from the end of the signature.

CARL D. PRICE  
Primary Examiner  
Art Unit 3749

CP